

Application No. 10/664,776
Reply to Office Action dated September 16, 2005
Reply to Office Action of March 16, 2005

REMARKS

Applicant added new claims 2-7 to further define Applicant's invention.

In the Office Action, the Examiner rejected claim 1 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,275,601 to Gogolewski et al. ("Gogolewski"). Applicant respectfully traverses the Examiner's rejection. Independent claim 1 recites a bone plate and a fastener, the fastener "having a surface configured to engage a drive tool" wherein "a portion of the bone plate overlays a portion of said surface."

Gogolewski teaches an absorbable bone screw 10 having a head 3 which projects partially from plate 20. (Gogolewski, col. 5, 12-16; Figs. 4a and 5a). The Examiner contends that "with the plate oriented as shown above, with the plate surface 20 oriented vertically, the portion of the plate that is above the screw head 3 and surface 17 (e.g. at 15) can be said to 'overlay' surface 17." (Office Action, paragraph bridging pages 2-3).

Applicant respectfully disagrees with the Examiner's contention. The plate of Gogolewski does not overlie hexa-hole 17, which is the tool-engaging surface of the screw. The plate of Gogolewski surrounds the sides of the screw head, not the top of the screw, which extends beyond the bone screw hole above the plate. (See, e.g., Gogolewski, Fig. 5a). The plate is separated from the hexa-hole 17 by the thickness of screw head that surrounds the hole. Accordingly, the plate does not "overlie" the hole itself.

Moreover, Applicant respectfully submits that the Examiner is orienting the bone plate in a manner not taught by Gogolewski when describing the plate. In particular, Gogolewski teaches that the bone plate has an "upper part" and a "lower surface 22" for placement against the bone. (Gogolewski, col. 2, line 67, col. 5, line 68). Figs. 2, 3, 4a, and 5a each show bone plate 20 oriented so that lower surface 22 faces in a downward direction for placement against the bone. By orienting the plate of Gogolewski on its side so that the lower surface no longer faces in a downward direction, the lower surface is not being placed against the bone. Thus, the Examiner is re-orienting the bone plate of Gogolewski in a manner not taught by Gogolewski in an attempt to reject

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claim 1. Applicant respectfully submits that the bone plate of Gogolewski should be oriented in the manner taught by Gogolewski when applying it as a reference. Accordingly, Applicant submits that claim 1 is patentable over Gogolewski when Gogolewski is read in its proper context.

In view of the foregoing remarks, it is respectfully submitted that claim 1 is patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-1068.

Respectfully submitted,

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